LAWS

OF THE

STATE OF MONTANA

ENACTED BY THE

Forty-Eighth Legislature

In Special

Session

Held at Helena, the Seat of Government
December 12, 1983 Through December 17, 1983

Compiled by

MONTANA LEGISLATIVE COUNCIL

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EXPLANATORY NOTE:

Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics.

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SESSION LAWS

CHAPTER NO. 1

AN ACT PROVIDING PREFERENCE IN PUBLIC EMPLOYMENT FOR CERTAIN MILITARY VETERANS AND HANDICAPPED PERSONS AND THEIR ELIGIBLE SPOUSES; RECONCILING THE PREFERENCE STATUTES WITH THE HUMAN RIGHTS STATUTES; AMENDING SECTION 10-2-402, MCA; REPEALING SECTIONS 10-2-201 THROUGH 10-2-206, MCA; PROVIDING FOR PARTIAL RETROACTIVE EFFECT OF THE REPEAL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 10] may be cited as the "Montana Veterans and Handicapped Persons Employment Preference Act".

Section 2. **Purposes.** The purposes of [sections 1 through 10] are to recognize veterans and disabled veterans for service to their country, recognize past employment discrimination against handicapped persons, and facilitate the habilitation, rehabilitation, and readjustment of veterans, disabled veterans, and handicapped persons.

Section 3. **Definitions.** For the purposes of [sections 1 through 10], the following definitions apply:

(1) "Active duty" means full-time duty other than for training in the regular components of the United States army, air force, navy, marine corps, or coast guard with full pay and allowances. The term does not include monthly drills, summer encampments, initial training, or other inactive or active duty for training in the national guard or reserves.

(2) "Disabled veteran" means an individual, whether or not he is a veteran as defined in this section, who:

(a) served on active duty;

(b) has been separated from service by honorable discharge; and

(c) suffers a service-connected disability determined by the United States veterans administration to be 30% or more disabling.

(3) "Eligible spouse" means:

(a) the unremarried surviving spouse of a veteran who died while on active duty or whose death resulted from a service-connected disability; or

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(b) the spouse of:

(i) a disabled veteran determined by the United States veterans administration to have a 100% service-connected disability who is unable to use his employment preference because of his disability;

(ii) a person on active duty determined by the United States government to be missing in action or a prisoner of war; or

(iii) a handicapped person determined by the department of social and rehabilitation services to have a 100% disability who is unable to use his employment preference because of his disability.

(4) "Handicapped person" means an individual certified by the department of social and rehabilitation services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and which limits the individual's ability to obtain, retain, or advance in employment.

(5) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (5), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (5), or current participants in a federally authorized employment program is not an initial hiring.

(6) "Position" means a permanent or seasonal position as defined in 2-18-101 for a state position or a similar permanent or seasonal position with a public employer other than the state. However, the term does not include:

(a) a temporary position as defined in 2-18-101 for a state position or similar temporary position with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;

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(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

(7) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a postsecondary vocational-technical center or program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(8) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

(9) (a) "Veteran" means a person who:

(i) served on active duty during time of war or declared national emergency or in a campaign or expedition for which a campaign badge was authorized by the United States congress or the United States department of defense; and

(ii) has been separated from service by honorable discharge.

(b) The term does not include a retired member of the United States armed forces who is eligible for or receiving a military retirement allowance based on length of service and does not include any other retired member of a public retirement system, except social security, that is supported in whole or in part by tax revenues.

(10) "War or declared national emergency" means:

(a) World War I, beginning on April 6, 1917, and ending on November 11, 1918, both dates inclusive;

(b) World War II, beginning on December 7, 1941, and ending on December 31, 1946, both dates inclusive;

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(c) the Korean conflict, military expedition, or police action, beginning on June 27, 1950, and ending on January 31, 1955, both dates inclusive; and

(d) the Vietnam conflict, beginning on August 5, 1964, and ending on May 7, 1975, both dates inclusive.

(11) (a) "Mental impairment" means:

(i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

Section 4. **Employment preference in initial hiring.** (1) (a) Except as provided in 10-2-402, in an initial hiring for a position, if a job applicant who is a veteran, disabled veteran, handicapped person, or eligible spouse meets the eligibility requirements contained in [section 5] and claims a preference as required by [section 8], a public employer shall hire the applicant over any other applicant with substantially equal qualifications who is not a preference eligible applicant.

(b) In an initial hiring, a public employer shall hire a disabled veteran or handicapped person over any other preference eligible applicant with substantially equal qualifications.

(2) The employment preference provided for in subsection (1) does not apply to a personnel action described in subsection (5)(b) of [section 3] or to any other personnel action that is not an initial hiring.

Section 5. **Eligibility requirements.** No veteran, disabled veteran, eligible spouse, or handicapped person is ehtitled to receive employment preference as provided in [section 4] unless:

(1) he is a United States citizen;

(2) he has resided continuously in the state for at least 1 year immediately before applying for employment;

(3) if applying for municipal or county employment, he has resided for at least 30 days immediately before applying for employment in the city, town, or county in which employment is sought; and

(4) he meets those requirements considered necessary by a public employer to successfully perform the essential duties of the position for which he is applying.

Section 6. **Certification of handicapped persons.** The department of social and rehabilitation services shall certify persons as handicapped

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for the purpose of employment preference as provided in [sections 1 through 10].

Section 7. **Duration of employment preference.** Subject to [section 5]:

(1) a handicapped person, the spouse of a handicapped person as described in subsection (3)(b)(iii) of [section 3], a disabled veteran, or the spouse of a disabled veteran as described in subsection (3)(b)(i) of [section 3] qualifies for employment preference as long as the disabling condition exists;

(2) a veteran, as defined in [section 3], who is not a disabled veteran, as defined in [section 3], qualifies for employment preference for no longer than 15 years following separation from service or for no longer than 5 years following [the effective date of this act], whichever is later.

(3) the surviving spouse of a veteran as described in subsection (3)(a) of [section 3] qualifies for employment preference for as long as the spouse remains unmarried; and

(4) the spouse of a person described in subsection (3)(b)(ii) of [section 3] qualifies for employment preference for as long as the person is missing in action or a prisoner of war.

Section 8. **Enforcement of preference.** (1) A public employer shall, by posting or on the application form, give notice of the preferences that [sections 1 through 10] provide in public employment.

(2) A job applicant who believes he has an employment preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely employment preference claim for a position is a complete defense to an action in regard to that position under subsection (4).

(3) If an applicant for a position makes a timely written employment preference claim, the public employer shall give written notice of its hiring decision to each applicant claiming preference.

(4) (a) An applicant who believes he has not been accorded his rights under [sections 1 through 10] may, within 30 days of receipt of the notice of the hiring decision, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(b) The applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts which on their face entitle the applicant to an employment preference.

(c) (i) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 10 or more than 30 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public

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employer has the burden of proving by a preponderance of the evidence that the employer made a reasonable determination pursuant to subsection (8) of [section 3] and the applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

(ii) The time to appear provided in subsection (4)(c)(i) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (4)(c)(i), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(iii) If the public employer does not carry its burden of proof under subsection (4)(c)(i) and the court has found that the applicant is a preference eligible applicant, the court shall order the public employer to reopen the selection process for the position involved and shall grant the applicant reasonable attorney fees and court costs. The remedy provided by this section is the only remedy for a violation of [sections 1 through 10], and a court may not grant any other relief in an action for violation of [sections 1 through 10].

(d) Failure of an applicant to file a petition under subsection (4)(b) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (4)(a) within 15 days and a petition is filed under subsection (4)(b), the court shall order the public employer to reopen the selection process.

(e) The Montana Rules of Civil Procedure apply to a proceeding under this subsection (4) to the extent that they do not conflict with this subsection (4).

Section 9. **Adoption of rules.** The department of administration shall adopt rules implementing [sections 1 through 10] and shall consult with the department of social and rehabilitation services in adopting rules governing certification of handicapped persons for purposes of [sections 1 through 10]. The department of administration's rules apply to all public employers, local as well as state.

Section 10. **Conflicts with federal law.** [Sections 1 through 10] do not apply to work or positions subject to federal laws or regulations if application of the employment preference conflicts with those laws or regulations.

Section 11. Section 10-2-402, MCA, is amended to read:

"10-2-402. Superintendent to be given veteran's preference. In the selection of the superintendent of the Montana veterans' home, the department of institutions shall *apply the preference granted to veterans and disabled veterans, but not the preference granted to other persons, by [sections 1 through 10].*"

Section 12. The application of an employment preference as provided for in [sections 1 through 10] and 10-2-402 by a public employer as defined in [section 3] may not be construed to constitute a violation of this chapter.

Section 13. The application of an employment preference as provided for in [sections 1 through 10] and 10-2-402 by a public employer as

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defined in [section 3] may not be construed to constitute a violation of this chapter.

Section 14. **Repealer.** Sections 10-2-201 through 10-2-206, MCA, are repealed. This repeal applies retroactively to bar any claim of violation or application of 10-2-201 through 10-2-206 that has not been reduced to judgment, whether or not the judgment is final, on [the effective date of this act]. Claims under 10-2-201 through 10-2-206 that have been reduced to judgment, whether or not the judgment is final, on [the effective date of this act] are enforceable. No claim for a violation of 10-2-201 through 10-2-206 may be made under [section 8] of this act.

Section 15. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. **Effective date — applicability.** (1) This act is effective on passage and approval.

(2) Except as provided in section 14, this act applies only to positions that are filled after the effective date of this act.

Section 17. **Codification instruction.** (1) Section 12 is intended to be codified as an integral part of Title 49, chapter 2, and the provisions of Title 49, chapter 2, apply to section 12.

(2) Section 13 is intended to be codified as an integral part of Title 49, chapter 3, and the provisions of Title 49, chapter 3, apply to section 13.

Approved December 20, 1983.

HOUSE BILL NO. 10

AN ACT EXTENDING THE PAYMENT DATE OF A LOAN TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO FUND SUBDIVISION REVIEW; AMENDING SECTION 3, CHAPTER 696, LAWS OF 1983; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3, Chapter 696, Laws of 1983, is amended to read:

"Section 3. **General fund loan.** There is authorized from the general fund to the department of health and environmental sciences a loan up to $50,000 to be used for continuing the function of subdivision review for *the biennium ending June 30, 1985.* The loan must be repaid to the general fund no later than June 30, *1985.*"

Section 2. **Effective date.** This act is effective on passage and approval.

Approved December 16, 1983.

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APPROPRIATIONS

ENACTED BY THE

Forty-eighth Legislature

IN SPECIAL

SESSION

STATE OF MONTANA

1983

HOUSE BILL NO. 1

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE SPECIAL SESSION OF THE FORTY-EIGHTH LEGISLATURE CONVENING ON DECEMBER 12, 1983; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following amounts are appropriated from the general fund for fiscal year 1984 for the operation of the special session of the forty-eighth legislature convening on December 12, 1983:

House of Representatives	$165,000
Senate	105,000
Legislative Council	25,000

Section 2. **Effective date.** This act is effective on passage and approval.

Approved December 14, 1983.

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CODE SECTIONS AFFECTED

MCA OF 1983

Title-Ch.-Sec.	Action	Chapter
10-2-201—206	repealed	1
10-2-402	amended	1
39-30-101—103	enacted	1
39-30-106—108	enacted	1
39-30-201—203	enacted	1
39-30-206, 207	enacted	1
49-2-405	enacted	1
49-3-103(2)	enacted	1

SESSION LAWS AFFECTED

Laws Affected	Action	Chapter
Laws of 1983		
Ch. 696, Sec. 3	amended	HB 10, Sp.L. 1983

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1983 Ballot Issues

Const. Amend.	Sec.	MCA
No. 12	1	Art. VI, § 10
	2	Effective date
	3	Submission to electorate

Initiative	Sec.	MCA
No. 91	1	90-5-211
	2	Conveyance to national authorities
	3	Effective date
No. 95	1	17-6-303
	2	17-6-304
	3	17-6-305 17-6-310(1)
	4	17-6-331
	5	Severability
	6	Effective date

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Ch.	Sec.	MCA
1	1	39-30-101
	2	39-30-102
	3	39-30-103
	4	39-30-201
	5	39-30-202
	6	39-30-107
	7	39-30-203
	8	39-30-206 39-30-207
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	10	39-30-108
	11	10-2-402
	12	49-2-405
	13	49-3-103(2)
	14	Repealer
	15	Severability
	16	Effective date — applicability
	17	Codification

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